Office - Supreme Court, U.S.
FILED
AUG 24 1982
ALEXANDER L. STEVAS,
CLERK

No. 81-2351

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

DAVID W. SCHREFFLER,
Petitioner,
v.

PENNSYLVANIA LABOR RELATIONS BOARD, EASTERN LANCASTER COUNTY SCHOOL DISTRICT, and EASTERN LANCASTER COUNTY EDUCATION ASSOCIATION,
Respondents.

MEMORANDUM OF RESPONDENT EAST LANCASTER COUNTY EDUCATION ASSOCIATION IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

ROBERT H. CHANIN
JULIA PENNY CLARK
(Counsel of Record)
BREDHOFF & KAISER
Suite 1300
1000 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 833-9340

CATHERINE O'TOOLE
Box 1724
Harrisburg, Pennsylvania 17105
(717) 255-7025

Attorneys for Respondent
Eastern Lancaster County
Education Association

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

QUESTION PRESENTED

When a union that is recognized as the exclusive collective bargaining representative for a unit of public school teachers allows only its members to vote on the ratification of the collective bargaining agreement, is a non-member's constitutional right to petition government for redress of grievances violated?

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
TABLE OF AUTHORITIES	iv
STATEMENT OF THE CASE	1
ARGUMENT	4
The Union's decision to limit the right to vote on ratification of the collective bargaining agreement to its members did not infringe on petitioner's right to petition government for redress of grievances	4
CONCLUSION	8

TABLE OF AUTHORITIES

Cases Page

Abood v. Detroit Board of Education, 431 U.S. 209 (1977) ..... *passim*
Adderly v. Florida, 382 U.S. 39 (1966) 6
Babbitt v. United Farm Workers National Union, 442 U.S. 289 (1979) 6
City of Madison Joint School District No. 8 v. Wisconsin Employment Relations Commission, 429 U.S. 167 (1976) 6, 7
Confederated Indep. Unions v. Rockwell-Standard Co., 465 F.2d 1137 (3rd Cir. 1972) 4
Houchens Market of Elizabethtown, Inc. v. NLRB, 375 F.2d 208 (6th Cir. 1967) 4
NLRB v. Wooster Division of Borg-Warner Corp., 356 U.S. 342 (1958) 4
Smith v. Arkansas State Highway Employees, 441 U.S. 463 (1979) 6

Constitution and Statutes

U.S. CONST. amend. I ..... *passim*
U.S. CONST. amend XIV ..... *passim*
Pennsylvania Public Employee Relations Act, 43 Pa. Stat. Ann. §§ 1101.101 et seq. ..... *passim*
43 Pa. Stat. Ann. § 1101.66 4
43 Pa. Stat. Ann. § 1101.902 4

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

No. 81-2351

DAVID W. SCHREFFLER,

Petitioner,

v.

PENNSYLVANIA LABOR RELATIONS BOARD, EASTERN LANCASTER COUNTY SCHOOL DISTRICT, and EASTERN LANCASTER COUNTY EDUCATION ASSOCIATION,

Respondents.

MEMORANDUM OF RESPONDENT EAST LANCASTER COUNTY EDUCATION ASSOCIATION IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondent East Lancaster County Education Association urges denial of the Petition for Writ of Certiorari on the ground that the Petition does not present any question warranting review by this Court.

STATEMENT OF THE CASE

The relevant facts and proceedings below are set forth in the Petition for Certiorari at 3-8, and need not be repeated here. It is important, however, to note the following clarifications:

1. Petitioner contends that he was "not allowed to participate" in the September 6, 1977, meeting called by respondent Eastern Lancaster County Education Association (hereinafter "Union") to vote on the ratification of an amendment to its collective bargaining agreement with respondent Eastern Lancaster County School District. Petn. at 5. The same contention was made in, and rejected by, the Pennsylvania courts. They found that petitioner was notified of the ratification meeting and invited to attend by an announcement placed in his personal mail box. Appendix to Petn. (hereinafter "App.") at 3a, 38a. The courts below also found that non-members of the Union, such as petitioner, not only were invited to attend the meeting, but were afforded the opportunity "to ask questions and express their views" before the ratification vote was taken. App. 3a, 9a, 16a-17a, 42a.[1]

2. Although petitioner correctly states that the amendment to the collective bargaining agreement that was ratified at the September 6, 1977, meeting "provid[ed] for a group dental plan", Petn. at 4, he neglects to mention that the same amendment also "increased compensation [and] extended sick leave" for members of the bargaining unit. App. 16a. Petitioner accepted these latter improvements without objection; he objected only to the bi-weekly deduction from his salary of $1.75 (subsequently reduced to $1.31) for dental insurance be-

[1] The duty of fair representation imposed upon a recognized union by the Pennsylvania Public Employee Relations Act, 43 Pa. Stat. Ann §§ 1101.101, *et seq.* (Purdon Supp. 1981) (hereinafter "Pa. Act") obligates it to communicate with and solicit the views of all employees in the bargaining unit, whether or not they are union members. App. 5a. The Pennsylvania Labor Relations Board (hereinafter "PLRB"), which is the state agency responsible for administering the Pa. Act, and the Pennsylvania courts, concluded in this case that the Union had fully met this obligation.

cause, as petitioner explained, he "has good teeth." App. 9a.[2]

3. Petitioner's assertion that he has been "precluded from voicing his views on the contract which governs the terms and conditions of his employment by the School District," Petn. at 4, is based entirely on the fact that he was not allowed to vote on the ratification of the amendment to the collective bargaining agreement. *See* Petn. 4a, 17a. There is nothing in the record to indicate, and petitioner does not even contend, that the Commonwealth of Pennsylvania, the Eastern Lancaster County School District, or the Union in any other way "precluded [him] from voicing his views" to the School District on the matter of dental insurance or any other term or condition of his employment, or that he was in this respect treated any differently from any other citizens.

5. Petitioner's decision not to join the Union has had no impact whatsoever on his employment. In regard to dental insurance and all other terms and conditions of employment, members and non-members of the Union have been treated identically. "There is," as the PLRB concluded, "not one scintilla of evidence in the record to show that the Education Association has not met its obligation as the duly certified exclusive employe representative" to represent all employees in the bargaining unit fairly. App. 33a.[3]

---

[2] Inasmuch as the vote in favor of ratification was 99 to 1, the PLRB found that petitioner's vote in any event would not have affected the outcome. App. 3a, 24a, 30a.

[3] That conclusion was affirmed by Pennsylvania's Court of Common Pleas, App. 19a, and Commonwealth Court. App. 9a-10a.

ARGUMENT

The Union's decision to limit the right to vote on ratification of the collective bargaining agreement to its members did not infringe on petitioner's right to petition government for redress of grievances

Pennsylvania authorizes public school teachers in an appropriate unit to select a union to represent them in collective bargaining with their employing school district, and the union selected is designated as the "exclusive representative" for all of the teachers in that unit. Pa. Act § 1101.66. This arrangement, which for almost half a century has been the cornerstone of national labor policy in the private sector, was approved by this Court for states to use in regulating public sector labor relations in *Abood v. Detroit Board of Education*, 431 U.S. 209, 224-25, 229-30 (1977).

Pennsylvania views the procedure that is used to ratify collective bargaining agreements as an internal union matter. Accordingly, it allows the exclusive representative to decide for itself whether to conduct a vote, and if it does, whether to allow all employees in the bargaining unit or only those who are members of the union to cast a ballot. Pa. Act § 1101.902. In this respect also, Pennsylvania's choice mirrors the policy that exists under federal law in the private sector.[4]

In challenging the constitutionality of the position taken by Pennsylvania *vis-a-vis* the ratification of collective bargaining agreements, petitioner begins by asserting that the state may not penalize a public employee because of the "exercise of his right not to associate" with a union or condition the exercise of that right on the relinquishment of other constitutional rights. Petn. at 10. The

---

[4] *See, e.g., NLRB v. Wooster Division of Borg-Warner Corp.*, 356 U.S. 342, 349-50 (1958); *Confederated Indep. Unions v. Rockwell-Standard Co.*, 465 F.2d 1137, 1140 (3rd Cir. 1972); *Houchens Market of Elizabethtown, Inc. v. NLRB*, 375 F.2d 208, 212 (6th Cir. 1967).

Union certainly has no abstract quarrel with this black-letter proposition of constitutional law. In attempting to apply it to the instant case, however, petitioner has fashioned an argument that patently is without merit. Specifically, petitioner argues that because he has chosen to exercise his constitutional right not to associate with the Union, he has been denied the right to vote on the ratification of its collective bargaining agreement with the School District. According to petitioner, the right to vote on such ratification is embodied in his First and Fourteenth Amendment right to petition government for redress of grievances. *Ergo*, petitioner concludes that the state has "penaliz[ed] . . . the exercise of his right not to associate by totally depriving him of his right to petition. . . ." Petn. at 10.[5] As we demonstrate below, the underlying predicate for this argument—*i.e.*, that the collective bargaining process generally, and the right to vote on the ratification of collective bargaining agreements

---

[5] The Pennsylvania Act does not, on its face or as applied, *require* a union to deny to non-members the right to vote on the ratification of a collective bargaining agreement; it merely *permits* such a limitation, but leaves to individual unions the decision in this regard. Accordingly, inasmuch as it was the Union, a private entity, that actually denied to petitioner the right to vote, a threshold question in this case is whether there is sufficient state action even to implicate the right to petition. It is not necessary for present purposes to resolve this question since, as we demonstrate in the text, petitioner's argument fails in any event. In order to deal with the underlying theory that he advances, however, we have for purposes of the textual discussion assumed that the question is as follows:

> Does a state infringe the right to petition when it authorizes collective bargaining by public employees through a union recognized as the exclusive representative, but does not require the union to extend to non-members the right to vote on contract ratification?

Although in subdivision (1) of the QUESTIONS PRESENTED section of his Petition, petitioner challenges the constitutionality of exclusive recognition itself, he does not pursue that challenge in the body of the Petition. That issue is, of course, foreclosed by this Court's decision in *Abood*, *supra*.

specifically, are aspects of the First and Fourteenth Amendment right to petition—is in direct conflict with the controlling decisions of this Court.

This Court has made it clear that the right to petition is "not a substitute for the national labor relations laws." *Smith v. Arkansas State Highway Employees*, 441 U.S. 463, 464 (1979). Although the First Amendment gives public employees the same right as other citizens to express their views to government, it does not create for such employees any special right to be heard: "[T]he First Amendment does not impose any affirmative obligation on the government to listen, to respond, or . . . to recognize the association and bargain with it." *Id.* at 465. *See also, Babbitt v. United Farm Workers National Union*, 442 U.S. 289, 313 (1979) ("[T]he Constitution does not afford . . . employees the right to compel employers to engage in a dialogue or even to listen.").

It follows that when a state engages in collective bargaining with a union representing its public employees, the bargaining process is wholly independent of the constitutional right of those employees to petition government for redress of grievances. This is why a state "constitutionally may adopt, a statutory policy that authorizes public bodies to accord exclusive recognition to representatives for collective bargaining . . . [and] there is nothing unconstitutional about legislation commanding that in closed bargaining sessions a government body may admit, hear the views of, and respond to only the designated representatives of a union selected by the majority of its employees." *City of Madison Joint School District No. 8 v. Wisconsin Employment Relations Commission*, 429 U.S. 167, 178 (1976) (Brennan, concurring). *Cf. Adderley v. Florida*, 385 U.S. 39, 48 (1966) (the First Amendment does not require "that people who want to [voice their] views [to government] have a constitutional right to do so whenever and however and wherever they please"). In short, the right to petition does not

compel a state to engage in collective bargaining with its public employees, nor, if a state chooses to do so, does that right require it to provide an opportunity for individual public employees to express their views *as part of the collective bargaining process*, rather than through the normal avenues of communication that are available to all citizens.

The foregoing should be correctly understood. We are not suggesting that a state may use its power to regulate public sector labor relations as an excuse for impermissibly restricting the exercise of First Amendment rights by individual public employees. "[T]he principle of exclusivity cannot constitutionally be used to muzzle a public employee who, like any other citizen, might wish to express his view about governmental decisions concerning labor relations." *Abood, supra*, 431 U.S. at 230. But petitioner does not contend that Pennsylvania has run afoul of this principle here: there is no dispute about the fact that, other than his ineligibility to take part in the collective bargaining process by voting on contract ratification, petitioner has not been restrained in any way from communicating with the School District to express his views on dental insurance or any other term or condition of his employment. *City of Madison Joint School District No. 8, supra*, 429 U.S. at 176, n.10 (1976); *Abood, supra*, 431 U.S. at 230.

Accordingly, it is unnecessary even to address petitioner's contentions as to whether and under what circumstances the governmental interests served by exclusive recognition could justify restrictions on an individual teacher's right to petition government. *See* Petn. at 10-11. As the courts below correctly concluded, Pennsylvania's decision not to require unions to allow nonmembers to vote on the ratification of collective bargaining agreements, and the Union's decision in this case not

to do so, simply do not infringe upon petitioner's right to petition.[6]

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

ROBERT H. CHANIN
JULIA PENNY CLARK
(Counsel of Record)
BREDHOFF & KAISER
Suite 1300
1000 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 833-9340

CATHERINE O'TOOLE
Box 1724
Harrisburg, Pennsylvania 17105
(717) 255-7025

Attorneys for Respondent
Eastern Lancaster County
Education Association

[6] Petitioner concludes his Petition by suggesting that this Court should resolve a "conflict" between the decision below and a decision of a Florida intermediate appellate court that "as a matter of state statutory construction" required public employee unions to allow non-members "to vote on contract ratification." Petn. at 13-14. Extended discussion is not necessary to demonstrate that differences in interpretation of state statutes by the courts of different states present no federal question for this Court's review.